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NO. 57233-8

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**IN THE COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

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DANIELLE R. PRUSSAK,

Petitioner/Respondent,

v.

ROBERT A. PRUSSAK,

Respondent/Appellant.

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**RESPONDENT'S RESPONSE BRIEF**

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## TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION .....	1
II. COUNTERSTATEMENT OF THE CASE.....	1
III. AUTHORITY AND ARGUMENT .....	10
A. The Trial Court Properly Exercised its Discretion When it Renewed the Domestic Violence Protection Order.....	10
1. The Trial Court’s Findings support its decision to renew the DVPO .....	10
2. The Trial Court’s Finding that Robert failed to show a substantial change of circumstances is supported by the record .....	11
a. Robert committed harmful acts against Danielle since the entry of the initial DVPO.....	12
b. Robert violated the terms of the initial DVPO. ....	14
c. The trial court properly considered other factors in evaluating whether there was a substantial change in circumstances.....	15
3. The trial court’s finding that Robert failed to prove that he would not resume acts of domestic	

## TABLE OF CONTENTS

	<b><u>Page</u></b>
violence is supported by the record.....	16
4. Robert was afforded adequate due process in the DVPO renewal proceedings.....	18
5. Robert's collateral estoppel argument fails as there is no requirement under RCW 7.105.405(4)(a) that the trial court make findings about assaultive behavior in order to renew the DVPO .....	19
IV. CONCLUSION .....	21

## TABLE OF AUTHORITIES

	<u>Page(s)</u>
<b>Cases</b>	
<i>Adcox v. Children’s Orthopedic Hosp. &amp; Med. Ctr.</i> , 123 Wn.2d 15, 864 P.2d 921 (1993) .....	10
<i>Gourley v. Gourley</i> , 158 Wn. 2d. 460, 145 P.3d 1185 (2006) .....	18
<i>Hecker v. Cortinas</i> , 110 Wn. App. 865, 43 P.3d 50 (2002) .....	10
<i>In re Marriage of Littlefield</i> , 133 Wn.2d 39, 940 P.2d 1362 (1997) .....	10
<b>Statutes</b>	
RCW 7.105.405(4) .....	11
RCW 7.105.405(4)(a).....	<i>passim</i>
RCW 7.105.405(5)(a).....	13, 14
RCW 7.105.405(5)(a)-(g).....	12
RCW 7.105.405(5)(b) .....	14, 15
RCW 7.105.405(5)(g) .....	15, 16
<b>Rules</b>	
RAP 2.5.(a) .....	11, 18

## **I. INTRODUCTION**

Appellant Robert Prussak (hereinafter “Robert”) has not met his burden to establish that the trial court erred in entering the Order on Renewal of Order for Protection. Robert has not shown that the trial court manifestly abused its discretion, or that it entered findings on unreasonable or untenable grounds. Credible testimony and substantial evidence support the trial court’s findings. Based on this evidence, the trial court exercised proper discretion in entering the Order on Renewal of Order for Protection.

## **II. COUNTERSTATEMENT OF THE CASE**

This appeal concerns the entry of a final order granting Danielle Prussak’s (hereinafter “Danielle”) petition to renew a domestic violence protection order (hereinafter “DVPO”) in Thurston County Superior Court case # 21-2-30358-34. CP 176. The renewal hearing was held on July 19, 2022 in front of Superior Court Commissioner Rebekah Zinn (hereinafter “Commissioner Zinn”). CP 76. On July 19, 2022, a final order

was entered granting Danielle's petition for renewal of the DVPO. CP 174-175.

Danielle filed an initial petition for a DVPO in Thurston County Superior Court on June 4, 2021. CP 1-8. A hearing on the initial petition was held on July 7, 2021 with Commissioner Zinn presiding. CP 77. Danielle appeared *pro se*, and attorney Hilda Pietri Ramirez represented Robert. CP 78. During the July 7, 2021 hearing, Danielle testified to several events in which Robert acted with physical violence toward her. CP 92-93. Danielle first testified regarding an incident in 1992, when she and Robert were showering together. CP 93. Danielle stated that she was being silly and spit water on Robert. CP 93. According to Danielle, Robert responded by getting very, very angry, grabbing her shoulders and shoving her aside. CP 93. Danielle described how the incident left her with a very large bruise on her thigh. CP 93. Danielle also testified to an incident in 1993 when Robert grabbed her by her shirt collar, yanked her, and punched her in the jaw. CP 93. Danielle testified that the physical

pain she experienced after Robert punched her in the jaw lasted for days. CP 93. Additionally, Danielle testified about an incident in 2007 in which Robert pushed her down on the bed and had anal sex with her without any preparation. CP 94. Danielle described Robert as being drunk, and the anal sex as painful. CP 94. Danielle stated she did not give Robert permission to touch her that way. CP 94. Danielle also testified about an incident in 2020, in which Robert was very drunk and he grabbed her leg after entering their daughter's bedroom where she had attempted to barricade herself from him. CP 95-96.

In addition to physical violence, Danielle further testified that: Robert contacted spouses of her friends and told them she was mentally unstable because she was perimenopausal (CP 99); Robert started monitoring her devices in 2018 (CP 100); Robert was controlling with finances (CP 103); Robert limited contact with Danielle's family (CP 104); Robert trespassed onto her property (CP 104); Robert threw things when angry (CP 106);

and Robert would block her exit from a room when they were arguing (CP 107).

After Danielle testified, she was cross-examined by Robert's attorney, and both parties made closing arguments. CP 109-117, CP 119-127. The court found that Robert assaulted Danielle when he hit her jaw, and that he assaulted her when they were in the shower. CP 128. The court also found Danielle credible when she testified that Robert was violent when he assaulted her. CP 128. The court further found that Robert sexually assaulted Danielle in 2007 and that Danielle's testimony on this issue was credible. CP 129. The court found that Robert did not assault Danielle in 2020 when he grabbed her leg. CP 129. Additionally, the court found that Robert did not engage in stalking behaviors or that any acts of domestic violence had occurred since 2007. CP 130. At the end of the hearing, the court granted Danielle's petition and entered a one-year DVPO protecting Danielle from Robert. CP 59-64. Robert filed a motion



for revision on July 16, 2021. CP 65-75. The court denied Robert's motion for revision on August 27, 2021. CP 149.

Danielle filed a petition for renewal of the DVPO on June 14, 2022. CP 151. A full hearing on Danielle's petition to renew the protection order was held on July 19, 2022 before Commissioner Zinn, and both parties were pro-se. RP 5. At the renewal hearing, Robert testified that he engaged in remedial services. RP 11. Robert also testified that he completed a program so the court in California could seal his DUI from 2019. RP 12. Robert then testified about the incident at the airport in which Danielle alleged he came within 1000 feet of her during exchange of the children. RP 12. Robert testified that he messaged Danielle that he was at the airport and he "reminded" her that she could not be there because of the protection order. RP 12. Robert also testified that he and Danielle had been having others do the exchanges for them because of the protection order. RP 12. During this exchange of the children, Robert explained that he was "pretty confident" Danielle knew he would be

waiting at the arrival terminal since he had messaged her and she had replied. RP 12-13.

Robert also denied monitoring Danielle's activities. RP 14. He described getting an address from his daughter about where she would be going for Halloween and conducting google searches on that address, and conducting additional google searches on the individual associated with that address. RP 14. Robert testified that he later conducted another google search on the individual associated with that address when he learned his family would be returning to that address, and he found that individual had a DUI. RP 14. Robert further testified that after he contacted his attorney about his google searches, his attorney sent a letter to Danielle that questioned if she was associating with someone with a DUI and stating that Robert wanted to make sure his daughters did not drive in a car with that person. RP 14-15.

Danielle also testified at the renewal hearing. RP 16. With regard to the airport incident, Danielle stated that she notified

Robert that she and her daughters would be meeting with the escort of the Port Authority. RP 16. While they were waiting for the Port Authority to meet them, Robert kept walking back and forth instead of waiting for the Port Authority or taking their calls. RP 16. The Port Authority was looking for him but he would not stay in one place. RP 16. Danielle also testified that Robert was not following the DVPO communication requirements, which limited Robert to communicating with Danielle through Family Wizard and restricted the communication to contact about the girls and their health and welfare. RP 16-17, CP 61. Danielle also testified that Robert used family wizard to communicate with her about taxes, and that he directed her not to file her taxes until he spoke to his attorney. RP 17. Danielle further testified about the financial difficulties she faced due to Robert's making light payments on child support. RP 17. She also described how child support payments for six of the past fifteen months were late. RP 18. Danielle further testified that Robert monitored where she was going

through their daughters. RP 18. Danielle described an incident in which Robert showed their daughter a photo and asked her to identify an individual he thought Danielle was dating. RP 19. Additionally, Danielle testified she was concerned that domestic violence, including harassment, coercive control and financial control, would continue without a protection order. RP 18.

After Danielle testified, the court allowed Robert to provide brief rebuttal testimony. RP 21. In his rebuttal testimony, Robert disputed that he was late with child support payments except on one occasion, and he asserted that he did not order Danielle to file taxes with him. RP 21-22. After Robert denied texting Danielle about taxes, he stated that he messaged Danielle on Family Wizard about taxes to avoid a financial burden. RP 22-24.

At the end of the renewal hearing, Commissioner Zinn found that Robert failed to prove he would not resume acts of domestic violence or that there had been a substantial change in circumstances. RP 24. Commissioner Zinn observed that the

court had previously found assaultive behavior by Robert between 1992 and 2021. RP 24. Commissioner Zinn also remarked that the parties were involved in ongoing disputes over custody, financial matters, exchange of the children, and support payments. RP 24-25. Commissioner Zinn expressed concern about acts of domestic violence resuming if the DVPO was not renewed. RP 25. Commissioner Zinn stated that her biggest concern was the “monitoring situation.” RP 25. Commissioner Zinn found that Robert’s actions were potentially stalking behavior and harassment when he investigated Danielle’s alleged partner on the internet. RP 25. Based on her findings, Commissioner Zinn granted Danielle’s petition and renewed the DVPO for an additional year. RP 25.

### III. AUTHORITY AND ARGUMENT

#### A. The Trial Court Properly Exercised its Discretion When it Renewed the Domestic Violence Protection Order

##### 1. The Trial Court's Findings support its decision to renew the DVPO

The entry of a domestic violence protection order is reviewed for abuse of discretion. *Hecker v. Cortinas*, 110 Wn. App. 865, 869, 43 P.3d 50, 52 (2002). A trial court only abuses its discretion if its decision is manifestly unreasonable, based on untenable grounds, or untenable reasons. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362, 1366 (1997). A court's decision is unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if an incorrect standard is applied or if the facts do not fall within the correct standard. *Id.* at 47. A trial court may be affirmed on any ground established by the pleadings or proof, even if not considered by the trial court. *Adcox v. Children's Orthopedic*

*Hosp. & Med. Ctr.*, 123 Wn.2d 15, 32, 864 P.2d 921 (1993); RAP 2.5.(a).

Pursuant to RCW 7.105.405(4)(a), the court is *required* to grant a motion for renewal of a domestic violence protection order unless the respondent proves by a preponderance of the evidence that there has been a substantial change of circumstances and that the respondent will not resume acts of domestic violence against the petitioner when the order expires. RCW 7.105.405(4) and RCW 7.105.405(4)(a). In this case, the trial court did not abuse its discretion because it applied the appropriate legal standards, and its factual findings are thoroughly supported by the record.

2. The Trial Court's Finding that Robert failed to show a substantial change of circumstances is supported by the record

The trial court's finding that Robert did not demonstrate a substantial change in circumstances since the initial DVPO was entered is supported by the evidence from the renewal hearing. In determining whether there has been a substantial change in

circumstances, the court may consider the seven *non-exhaustive* factors listed under RCW 7.105.405(5)(a)-(g). RCW 7.105.405(5)(a)-(g). The relevant factors in this case include:

- (a) Whether the respondent has committed or threatened sexual assault, domestic violence, stalking, abandonment, abuse, financial exploitation, or neglect of a vulnerable adult, or other harmful acts against the petitioner or any other person since the protection order was entered;
- (b) Whether the respondent has violated the terms of the protection order and the time that has passed since the entry of the order;
- (c) – (f) [omitted]
- (g) Other factors relating to a substantial change in circumstances.

RCW 7.105.405(5)(a)-(g) (factors c, d, e, f, omitted).

The relevant factors under RCW 7.105.405(5)(a)-(g) are addressed below in the same order in which they are listed above:

- a. Robert committed harmful acts against Danielle since the entry of the initial DVPO.

There was evidence presented at the renewal hearing that Robert committed harmful acts against Danielle since entry of



the DVPO, and this evidence supported the trial court's finding that Robert failed to show a substantial change of circumstances. At the renewal hearing, Danielle testified that since the entry of the initial DVPO, Robert violated the terms of the DVPO by communicating with her about issues besides the welfare of the children, by directing her not to file taxes, by being repeatedly late with child support payments, and by engaging in harassing and monitoring behavior. RP 16-19. Based on Danielle's testimony, there was evidence that Robert had committed other harmful acts since the initial DVPO was entered. *Id.* Robert's argument that under RCW 7.105.405(5)(a) there were no allegations that Robert committed or engaged in acts of domestic violence, sexual assault, abandonment or abuse, neglects to consider all the conduct covered under RCW 7.105.405(5)(a).

Robert argues that the trial court abused its discretion by applying the wrong legal standards because Robert's conduct at issue under RCW 7.105.405(5)(a) did not satisfy the separate statutory definitions for "stalking" and "financial exploitation."

Appellant's Brief at 14, 17. This argument fails because Robert's conduct as testified to by Danielle at the renewal hearing falls under the "other harmful acts" category. RCW 7.105.405(5)(a).

Based on the parties' testimony at the renewal hearing, there was evidence under RCW 7.105.405(5)(a) that Robert committed other harmful acts against Danielle since entry of the initial DVPO, and this evidence supported the court's finding that Robert failed to show a substantial change of circumstances.

b. Robert violated the terms of the initial DVPO.

Based on the parties' testimony at the renewal hearing, there was evidence under RCW 7.105.405(5)(b) that Robert violated the terms of the DVPO, and this evidence supported the trial court's finding that Robert failed to show a substantial change of circumstances. Pursuant to RCW 7.105.405(5)(b), the court may consider whether there have been any violations of the DVPO in assessing whether there has been a substantial change in circumstances. RCW 7.105.405(5)(b). The initial DVPO imposed communication restrictions on the parties, and limited

contact to communication about visitation and welfare of the children. CP 61. At the renewal hearing, Robert testified that he communicated with Danielle about tax and financial issues. RP 23-24. Pursuant to RCW 7.105.405(5)(b), the evidence of Robert's violation of the DVPO communication restraint provisions supports the trial court's finding that Robert failed to show a substantial change of circumstances.

- c. The trial court properly considered other factors in evaluating whether there was a substantial change in circumstances.

Under RCW 7.105.405(5)(g), it was proper for the trial court to consider the parties' ongoing custody dispute, along with the parties' disputes over finances, child support and exchanges of the children, when evaluating whether Robert demonstrated a substantial change of circumstances. RCW 7.105.405(5)(g) specifically authorizes a trial court to consider "other factors relating to a substantial change in circumstances." Robert's argument that the trial court abused its discretion by renewing the protection order due to Robert exercising his constitutional

rights in the family law case is without merit. The existence of ongoing disputes between the parties is a relevant issue for the court to address under factor (5)(g). RCW 7.105.405(5)(g). The court heard evidence that the parties were involved in ongoing disputes over finances, child custody, child support payments, and exchanges of the children. RP 13, 16-19, 21-22. The trial court's finding that Robert failed to show a substantial change of circumstances is supported by evidence from the renewal hearing about multiple ongoing disputes between the parties and it was proper for the court to consider those disputes under RCW 7.105.405(5)(g).

3. The trial court's finding that Robert failed to prove that he would not resume acts of domestic violence is supported by the record.

Evidence from the renewal hearing supports the trial court's finding that Robert failed to establish he would not resume acts of domestic violence. At the renewal hearing, Robert testified about the airport incident that occurred during an exchange of the children and he described how the airport police

became involved. RP 12-13. Both parties testified Robert about messaging Danielle about taxes on Family Wizard. RP 17, 22, 24. Danielle testified Robert was late on multiple child support payments, and that he made “light” child support payments. RP 17-18. Robert disputed Danielle’s statements about child support and claimed he had only been late one time. RP 21-22. Danielle also testified about Robert monitoring her and she described an incident where Robert asked their daughter to view a photo and identify someone he thought Danielle was dating. RP 18-19. Additionally, Danielle testified she was concerned that Robert would resume acts of domestic violence, including harassment, coercive control, and financial control if the DVPO was not renewed. RP 18. The parties’ testimony about ongoing disputes in multiple areas, Robert’s conduct since the DVPO was entered, and Danielle’s testimony that she feared Robert would continue engaging in acts of domestic violence, all support the court’s finding that Robert failed to prove he would not resume acts of domestic violence. RP 12-13, 16-19, 21-22, 24.

4. Robert was afforded adequate due process in the DVPO renewal proceedings.

Robert argues, for the first time on appeal, that he was denied due process because the court allowed Danielle to testify about issues for which he did not receive adequate notice. Appellant's Brief at 14-16. This court should reject that argument because Robert failed to object during the hearing and is only now raising the issue on appeal. RP 16-21. An appellate court will generally refuse to consider issues that were not raised in the trial court. RAP 2.5(a). This Court should decline to consider Robert's evidentiary objection that is being raised for the first time on appeal.

Robert was afforded more than the required due process of adequate notice and ability to be heard. Due process is flexible and can accommodate situations requiring differing levels of protection. *Gourley v. Gourley*, 158 Wn. 2d. 460, 467, 145 P.3d 1185 (2006). When the initial DVPO was entered on July 7, 2021, Robert appeared and was represented by counsel. CP 78.

With the assistance of counsel, Robert filed a motion for revision, which was denied by Judge Chris Lanese. CP 149. After Danielle filed a petition to renew the protection order, Robert, acting *pro se*, filed responsive pleadings documenting his google searches. CP 160-163. Robert participated in the renewal hearing at which he testified, and provided rebuttal testimony. RP 11, 21. Even if this Court addresses Robert's evidentiary objection, raised for the first time on appeal, it should conclude that Robert was afforded adequate due process and reject his argument that the trial court abused its discretion by considering testimony he did not object to at the renewal hearing and to which he had an opportunity to respond.

5. Robert's collateral estoppel argument fails as there is no requirement under RCW 7.105.405(4)(a) that the trial court make findings about assaultive behavior in order to renew the DVPO

This court should reject Robert's collateral estoppel argument because the trial court did not need to make any findings about Robert's assaultive behavior in order to renew the

DVPO. At the renewal hearing, the Commissioner remarked that the court previously found that Robert had a history of assaultive behavior from 1992 to 2021. RP 24. This remark mischaracterized the court's prior determination at the initial DVPO hearing, that Robert did not commit any acts of domestic violence after 2007. CP 130. Nonetheless, the doctrine of collateral estoppel does not apply here, as the parties were not litigating whether domestic violence had occurred. The court previously made that determination in 2021, at the initial hearing when the DVPO was entered. At the renewal hearing, the Commissioner only needed to consider whether Robert met his burden to prove by a preponderance of the evidence that there had been a substantial change in circumstances and that he would not resume acts of domestic violence. RCW 7.105.405(4)(a). The Commissioner's remark about how much assault occurred prior to entry of the original DVPO, is not relevant to the renewal proceedings since the court is not entertaining a reconsideration, revision or appeal of the original DVPO. The Commissioner



made it clear that she was concerned about the ongoing custody disputes, financial disputes, disputes regarding the transfer of the children and Robert's monitoring of Danielle. RP 24-25.

There was substantial evidence to support the trial court's finding that Robert failed to meet his burden at the renewal hearing. Commissioner Zinn did not need to consider, let alone rely on, a precise definition of the period during which Robert assaulted Danielle. The trial court did not abuse its discretion when it renewed the DVPO, as its decision was properly based on a consideration the of the required factors under RCW 7.105.405(4)(a).

#### **IV. CONCLUSION**

Substantial evidence in the record supports the trial court's findings that Robert failed to meet his burden and that renewal of the DVPO was proper. The trial court reached its decision by applying RCW 7.105.405(4)(a). In this case, as required by RCW 7.105.405(4)(a), the trial court found that Robert failed to prove there had been a substantial change of circumstances since the

DVPO was entered, and that he failed to prove he would not resume acts of domestic violence if the DVPO expired. These findings are all that are required under RCW 7.105.405(4)(a), for a trial court to grant renewal of a DVPO. Therefore, the trial court's findings and order on renewal of protection order should be upheld and affirmed.

### **CERTIFICATE OF COMPLIANCE**

This document contains 3587 words exclusive of words contained in the appendices, the title sheet, the table of contents, the table of authorities, this certificate of compliance, the certificate of service, signature blocks, and pictorial images.

RESPECTFULLY SUBMITTED this 27th day of  
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NORTHWEST JUSTICE PROJECT

s/Julia Yetter  
Julia Yetter, WSBA# 48640  
*Attorney for Petitioner/Respondent*

## **CERTIFICATE OF SERVICE**

I certify, under penalty of perjury under the laws of the State of Washington, that on March 27, 2023 I caused the foregoing document to be filed with the Court of Appeals, Division II, of the State of Washington and to be served on all participants via the Washington State Appellate Courts' Portal.

DATED this 27th day of March, 2023.

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## Transmittal Information

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